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NASA Procedural Requirements

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2008**COMPLIANCE IS MANDATORY**[Printable Format \(PDF\)](#)

Subject: NASA Export Control Program

Responsible Office: Office of External Relations

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CHAPTER 5. INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR) PROCEDURES

5.1 GENERAL

5.1.1 In general, articles and services deemed to be defense articles and defense services, and so designated by the USML, are subject to the ITAR. Launch vehicles and satellites are on the USML. Designations of defense articles are made by the DOS, with the concurrence of the DOD. For more information refer to 22 CFR Parts 120 and 121 in the ITAR.

5.1.2 The USML, 22 CFR Part 121, contains 21 generally described categories of controlled commodities, technical data, and services subject to the ITAR. Two categories particularly relevant to NASA activities are: Category IV-Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines; and Category XV-Space Systems and Associated Equipment.

5.1.3 Imports.

Notably, unlike the EAR, the ITAR contains provisions governing certain imports of defense articles, including IVL requirements and License Exemptions. In most cases, temporary imports of USML-listed defense articles by NASA are eligible for ITAR License Exemptions. Permanent imports by NASA of USML-listed defense articles are regulated by the Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms; such permanent imports do not require a license. See 27 CFR § 47.53.

5.1.4 Any person who intends to export or to import temporarily a defense article must obtain the approval of the Office of Defense Trade Controls (DTC) prior to the export or temporary import, unless the activity qualifies for an Exemption (see Section 5.3 of this NPR, [infra](#)). Procedures for determining ITAR license requirements and License Exemption eligibility are delineated in the following decision tree:

5.2 DECISION TREE

5.2.1 To determine item License Exemption eligibility under the ITAR, first classify the item on the USML and review the Exemptions listed below. If any Exemption applies, a license is not required, but the exporter may have to file a Shipper's Export Declaration (SED) and other documents, in accordance with 22 CFR §§ 123.22(c), 123.22(d), 123.26, 125.6, or 126.4(d).

5.2.2 ITAR License Exemptions may not be used to effect exports of any items to Proscribed Countries or nationals of Proscribed Countries, as generally identified in 22 CFR § 126.1. Prohibitions may be due to United Nations Security Council embargoes, Secretary of State determinations that certain countries have repeatedly provided support for acts of international terrorism, or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. Comprehensive arms embargoes are normally published by the State Department in the [Federal Register](#) (see also <http://www.pmdtc.org/country.htm>).

5.2.3 If an Exemption is not available for a proposed export, an ITAR export license must be obtained. The following forms are appropriate for items on the USML:

- for temporary exports and transfers of unclassified items, use Form DSP-73;
- for permanent exports and transfers of unclassified items, use Form DSP-5;
- for exports and transfers of all classified items, use Form DSP-85; and
- for temporary imports of unclassified items, use Form DSP-61.

5.2.4 All ITAR license requests and other relevant license application information must be sent to the HEA at NASA Headquarters for submission of licenses.

5.3 LICENSE EXEMPTIONS

Numerous special conditions may exist that might permit the use of an ITAR License Exemption. Exemptions may apply due to the nature of the defense article or defense service, the destination, or the status of the exporting entity (i.e., U.S. Government agencies enjoy more permissive treatment under the ITAR than private companies). The details for Exemptions are found in the ITAR at 22 CFR Parts 123, 124, 125, and 126. Generally, any use of an ITAR License Exemption requires an International Agreement or contract, as well as coordination with the CEA or HEA.

5.3.1 Following is a summary of ITAR License Exemptions that are especially relevant to NASA activities:

1. **22 CFR §125.4(b)(13): Publicly Available Information About Defense Articles.** Exports of **publicly available information** about defense articles. This Exemption is applicable to information approved by NASA for public release in any form, usually through the procedures of NPR 2200, "Guidelines for Documentation, Approval, and Dissemination of NASA Scientific and Technical Information." It does not require that the information be published in order to qualify for the Exemption.
2. **22 CFR §125.4(b)(7): Technical Data Returned to Sender.** Exports of **technical data** being returned to the original source of import.
3. **22 CFR §126.4(a): Exports by or for U.S. Government Agency.** Temporary **import** or temporary **export** of **any defense article, including technical data or the performance of a defense service**, by or for NASA: (1) for NASA's official use; or (2) for carrying out a NASA cooperative program. Exemption applies only when all aspects of a transaction (export, carriage, and delivery abroad) are effected by a U.S. Government agency or when the export is covered by a GBL. DTC approval must be obtained before defense articles previously exported pursuant to this Exemption are permanently transferred, unless the defense articles have been rendered useless for military purposes beyond the possibility of restoration. **Note:** For purposes of this Exemption, defense articles exported for incorporation into a foreign launch vehicle or for use on a foreign launch vehicle or satellite that is to be launched from a foreign country are permanent exports.
4. **22 CFR §126.4(c): Imports and Exports for Use by USG Agency Abroad.** Export or temporary import of **defense articles, including technical data and performance of a defense service**, for end-use by a USG agency in a foreign country, if: (1) Export or temporary import is pursuant to a contract with NASA or NASA-written direction; and (2) End-user in the foreign country is a USG agency or facility, and the defense articles or technical data will not be transferred to any Foreign Person; and (3) The urgency of the USG requirement is such that the appropriate export license or GBL could not have been obtained in a timely manner.
5. **22 CFR §125.4(b)(5): Operation Technical Data Exports for Lawfully Exported Articles.** Exports of **technical data** in the form of basic operations, maintenance, and training information relating to a defense article lawfully exported or authorized for export to the same recipient.
6. **22 CFR §125.4(b)(3): Technical Data Exports Directed by NASA.** Exports of **technical data** in furtherance of a contract between the exporter and NASA, where the contract provides for the export of the data and the data does not disclose the details of design, development, production, or manufacture of any defense article. The contract clause concerning use of this License Exemption is found at NFS 1852.225-70, alternate 1.
7. **22 CFR §125.5(c): Plant Visits.** Disclosures to Foreign Persons of unclassified **technical data** during the course of a plant visit approved by NASA; *provided*, the technical data does not contain information in excess of that approved for disclosure, and does not include information required for design, development, production, or manufacture of a defense article.
8. **22 CFR §123.16(b): Exports of Parts, Components, and Models.** Exports of **parts and components** when the total value does not exceed \$500 and parts are exported to support a defense article previously authorized for export, to a previously approved end-user, and not to be used to enhance the capability of the defense article. Also permits export of unclassified **models or mock-ups** of defense articles; *provided*, they are inoperable, do not reveal any detailed design, development, production, or manufacturing technical data, and do not contain USML-listed components.
9. **22 CFR §126.5: Canadian Exemption.** Most **temporary imports** from (and subsequent reexports to) Canada of

defense articles are eligible for this Exemption. Certain limited **exports of defense articles and defense services** to Canada and Canadian nationals are also permitted, subject to specific agreement and reporting requirements.

10. **22 CFR §123.4(a) and (b): Temporary Imports.** Temporary **import** for up to 4 years (and subsequent reexport to sending country) of unclassified **U.S.-origin defense items (and items manufactured abroad with U. S. Government approval)** for items serviced, inspected, tested, calibrated, repaired, or imported for the purpose of exhibition in the U.S.

11. **22 CFR §125.4(b)(11): Technical Data Authorized by Written DTC Waiver.** Exports of **technical data** for which the exporter, pursuant to an agreement with NASA which requires such exports, has been granted an Exemption in writing by DTC. This Exemption will normally be granted only if the arrangement directly implements an international agreement to which the United States is a party and if multiple exports are contemplated.

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